

# **APPENDIX A**

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- **List of Preparers**

## LIST OF PREPARERS

<b>Name</b>	<b>Contributions</b>	<b>Degree(s)</b>	<b>Years Experience</b>
<b>John Knopp, F.E.</b>	<b>Primary Author</b>	<b>B.S. Civil Engineering M.A. Liturgiology M.S. Environmental Engineering</b>	<b>20</b>
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<b>Alex Woelper, P.E.</b>	<b>Environmental Engineering</b>	<b>B.S. Civil Engineering M.A. Instruction</b>	<b>20</b>
<b>Thomas Kretzschmar</b>	<b>Water and Soil</b>	<b>M.S. Geology Ph.D. Geochemistry</b>	<b>10</b>
<b>Ravi Kommajosyula</b>	<b>Geology Review</b>	<b>B.S. Geology/Chemistry M.S. Geology M.S. Geochemistry</b>	<b>4</b>
<b>Jacob Worley</b>	<b>Habitats, Wetlands, Endangered Species, Fish &amp; Wildlife</b>	<b>B.S. Zoology, Botany</b>	<b>3</b>
<b>Kelly Worley</b>	<b>Habitats, Wetlands, Endangered Species, Fish &amp; Wildlife</b>	<b>B.S. Zoology, Botany</b>	<b>3</b>
<b>Bobbi Sorrell</b>	<b>Report Administration</b>	<b>A.S. Business Administration</b>	<b>13</b>
<b>Natalie Misque</b>	<b>Report Administration</b>	<b>A.S. Microcomputer Applications</b>	<b>5</b>

# **APPENDIX B**

## **(Listings)**

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During Final EA**

**B.1 - LIST OF AGENCIES, ORGANIZATIONS, AND  
PERSONS CONSULTED**

## B.1 - List of Agencies, Organizations, and Persons Consulted

POC	Title	Organization	Address	City	State	Zip
Mr. Lairy Johnson	Environmental Manager	ASARCO	P.O. Box 1111	El Paso	TX	79999
Mr. Harry Lara	Field Engineer	Burlington Northern Santa Fe Railway	1624 1st Street NW	Albuquerque	NM	87102
Mr. Cordell Roy	Superintendent	Chamizal National Memorial	800 South San Marcial	El Paso	TX	79905
Mr. Armando Jimarez	City Architect	City of El Paso	2 Civic Center Plaza, 4th Flr.	El Paso	TX	79999
Ms. Pat Adatao	Director of City Planning	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Mr. Edward Drusina	Director of Public Works	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
The Honorable Carlos Ramirez	Mayor of El Paso	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
The Honorable Rose Rodriguez	West Central Representative	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
The Honorable Jan Summerall	West Side Representative	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Dr. Jorge C. Magaña, M.D.	Director	City-County Health Unit	222 S. Campbell	El Paso	TX	79901
The Honorable Daniel Haggerty	County Commissioner, 4th Precinct	County of El Paso	500 E. San Antonio	El Paso	TX	79901
The Honorable Dolores Briones	County Judge	County of El Paso	500 E. San Antonio	El Paso	TX	79901
Mr. Mark Brotherton	Chairman	El Paso County Historical Society	9305 Turrentine	El Paso	TX	79925
Mr. Edd Fifer	General Manager	El Paso County Water Improvement Dist. #1	294 Candelaria	El Paso	TX	79907
Mr. Pete Parraz	President	El Paso Hispanic Chamber of Commerce	2829 Montana, Suite 2-F	El Paso	TX	79903
Ms. Barbara Valle	Head Librarian	El Paso Public Library	501 North Oregon Street	El Paso	TX	79901
Ms. Jane Fowler	Sanctuary Chair	El Paso Trans-Pecos Audubon Society	601 W. Yandell, F25	El Paso	TX	79902
Ms. Anai Padilla	Water Conservation Manager	El Paso Water Utilities, PSB	1154 Hawkins	El Paso	TX	79925
Mr. Gregg Cooke	Regional Administrator, 6RA	U.S. EPA, Region VI	1445 Ross Ave., Ste 1200	Dallas	TX	75202
Mr. Hector Pena	Technical Professional	EPA-Enforcement Division	1445 Ross Ave., Ste 1200	Dallas	TX	75202
Mr. Michael Janskey	Technical Professional	EPA-Enforcement Division	1445 Ross Ave., Ste.1200	Dallas	TX	75202
Mr. Joe Rubio	Lead Organizer	EPISO	7134 Alameda Ave.	El Paso	TX	79915
Ms. Denise Francis	State Single Point of Contact	Govenor's Budget Planning Office	P.O. Box 12428, Capitol Station	Austin	TX	78711
Mr. Wes Jurey	President	Greater El Paso Chamber of Commerce	10 Civic Center Plaza	El Paso	TX	79901
Mr. Robert Perez	Texas Director	LULAC, District No. 4	8700 Edgemere	El Paso	TX	79902
Ms. Catriona Glazebrook	Executive Director	National Audubon Society	2525 Wallingwood, Ste 1505	Austin	TX	78746
Mr. Hector F. Diaz	Acting Executive Director	Rio Grande Council of Gov'ts	1100 N. Stanton, Ste. 610	El Paso	TX	79902
Ms. Marybele Chavez	District Engineer	Texas Department of Hwys & Public Trans.	212 N. Clark, P.O. Box 10278	El Paso	TX	79905

POC	Title	Organization	Address	City	State	Zip
Mr. Oscar Mestas	District Manager	Texas Forest Service, El Paso Office	2 Civic Center Plaza	El Paso	TX	79999
Mr. F. Lawrence Oaks	Deputy State Historical Preservation	Texas Historical Commission	P.O. Box 12276	Austin	TX	78711
The Honorable Manny Najera	Representative - District #75	Texas House of Representatives	1716 Mike Hill	El Paso	TX	79936
The Honorable Norma Chavez	Representative - District #76	Texas House of Representatives	6070 Gateway East #508	El Paso	TX	79905
The Honorable Paul Moreno	Representative - District #77	Texas House of Representatives	2314 Montana Ave.	El Paso	TX	79903
The Honorable Pat Haggerty	Representative - District #78	Texas House of Representatives	4849 N. Mesa St. #206	El Paso	TX	79912
The Honorable Joe Pickett	Representative - District #79	Texas House of Representatives	1790 Lee Travino #307	El Paso	TX	79936
Mr. Archie Clouse	Regional Director	TNRCC	401 E. Franklin Ave., Ste 560	El Paso	TX	79901
Mr. Andrew Sansom	Executive Director	Texas Parks & Wildlife Dept.	4200 Smith School Road	Austin	TX	78744
Mr. David Riskind	Technical Professional	Texas Parks & Wildlife Dept.	4200 Smith School Road	Austin	TX	78744
The Honorable Jane Nelson	Texas State Senator, District #9	Texas Senate	P.O. Box 12068	Austin	TX	78711
The Honorable Eliot Shapleigh	Texas Senator - District #29	Texas Senate	800 Wyoming, Suite A	El Paso	TX	79902
Dr. Patricia Phillips	Head Librarian	UTEP Library	UTEP Library	El Paso	TX	79968
Mr. Vince Muñoz	Tribal Governor	Tigua Tribal Council	P.O. Box 17579	El Paso	TX	79917
LTC Raymond G. Midkiff	District Engineer	U.S. Army Corps of Engineers	4101 Jefferson Plaza NE	Albuquerque	NM	87109
Mr. Dan Malanchuk	Biologist, El Paso Office	U.S. Army Corps of Engineers-Albuquerque Dist.	P.O. Box 6096	Fort Bliss	TX	79906
Mr. Bert Cortez	Projects Manager	U.S. Bureau of Reclamation, Rio Grande Project	700 E. San Antonio St., Rm. B318	El Paso	TX	79901
Mr. Gurdit Dhillio	Acting District Director	U.S. Customs Service	P.O. Box 9516	El Paso	TX	79985
Mr. Bernie Olivas	Inspector	U.S. Department of Agriculture	3600 East Paisano, Rm. 154A	El Paso	TX	79905
Ms. Jennifer Fowler-Propst	Field Supervisor, Ecological Svc	U.S. Fish & Wildlife Service	3530 Pan American Highway, NE	Albuquerque	NM	87107
Ms. Nancy Kaufman	Regional Director	U.S. Fish & Wildlife Service, Region 2	P.O. Box 1306	Albuquerque	NM	87103
Mr. David C. Frederick	Supervisor, Office of Ecological Svc	U.S. Fish & Wildlife Service	10711 Barnet Road, Suite 200	Austin	TX	78758
Mr. Robert K. Johnson	Administrator	U.S. General Services Administration	700 E. San Antonio, Rm. C-415	El Paso	TX	79901
Mr. Ernesto Martinez	Assistant Chief	U.S. Immigration & Naturalization	8901 Montana Ave.	El Paso	TX	79925
The Honorable Silvestre Reyes	Congressman - District #16	United States House of Representatives	310 N. Mesa St., #400	El Paso	TX	79901
The Honorable Kay Hutchinson	Senator	United States Senate	284 Russell Senate Office Bldg.	Washington	D.C.	20510
Ms. Beth Parker	Project Manager	Daniel B. Stephens & Associates, Inc.	6020 Academy Rd NE, Suite 100	Albuquerque	NM	87109
The Honorable Phil Gramm	Senator	United States Senate	284 Russell Senate Office Bldg.	Washington	D.C.	20510
Ms. Bess Metcalf	Member	Rio Grande/Rio Bravo Basin Coalition	109 North Oregon, Suite 617	El Paso	TX	79901
Ms. Elizabeth Walsh	Member	Sierra Club, El Paso Regional Group	829 Cloudburst Drive	El Paso	TX	79912

## **B.2 - ORGANIZATIONS CONSULTED DURING EA**

## B.2 - ORGANIZATIONS CONSULTED DURING EA

AGENCY NAME	DEPT.	PHONE #	POC	POSITION
ABRAMS CONSTRUCTION	CONSTRUCTION	915-593-7393	BRAD EVERETT	PROJECT MANAGER
ALLIANCE ENV., INC.	DRILLING	915-855-8717	DAVID B. HOGAN	MANAGER
ASARCO	ENVIRONMENT	915-541-1819	LAIRY JOHNSON	ENVIRONMENTAL MANAGER
BNSF RAILROAD	NM DIVISION	505-767-6847	HENRY LARA	FIELD ENGINEER
BNSF RAILROAD	EL PASO DIVISION	915-534-2366	HENRY MONDRAGON	ROADMASTER
BNSF RAILROAD	EL PASO DIVISION	915-534-2308	MITCH ESPINOZA	TRAINMASTER
BNSF RAILROAD	RESOURCE PROTECTION	915-534-2309	MARIO REYES	CAPT. RAILROAD POLICE
BNSF RAILROAD	EL PASO DIVISION	915-534-2364	JOHN CAMPOS	TECHNICAL
BOGGS REAL ESTATE APPRAISAL	APPRAISAL	915-584-3670	JAMES BOGGS	CERTIFIED PROPERTY APPRAISER
CITY OF EL PASO	PARKS DEPT.	915-541-4745	NAT CAMPOS	PLANNING DIRECTOR
CITY OF EL PASO	CITY PLANNING DEPT.	915-541-4718	ROSEMARY STALEY	CHIEF PLANNER
CITY OF EL PASO	CITY ENGR. TRANSP.	915-541-4060	LUISA GARCIA	TRANSPORTATION ENGR.
CLEAN AIR PARTNERSHIP	N/A	915-543-9933	VERONICA CARBAJAL	SPOKESPERSON
EL PASO COUNTY WATER IMPROVEMENT DISTRICT #1	IRRIGATION	915-859-4186	ED FIFER	GENERAL MANAGER
EL PASO ELECTRIC	LINE LOCATION	915-543-5924	TERRY ALLEN	UNDERGROUND INSPECTOR
EL PASO NATURAL GAS	LINE LOCATION	800-344-8377	STAFF	UNDERGROUND INSPECTOR
EL PASO POLICE	TRAFFIC ENFORCEMENT	915-564-7000	LT. ROY DAVIS	SUPERVISOR
EL PASO POLICE	WESTSIDE COMMAND	915-564-7000	LT. TIM DAVIDSON	LIEUTENANT
EL PASO POLICE	WESTSIDE COMMAND	915-564-7000	RUDY BONILLA	OFFICER
EL PASO POLICE	UNION PACIFIC RLRD.	915-534-3614	CAPT. JAMES EDGAR	OFFICER
EL PASO POLICE	PUBLIC INFO. OFFICER	915-564-7000	TERESA CHAVIRRA	PUBLIC OFFICER
EL PASO WATER UTILITIES	WATER SYSTEMS DIV.	915-594-5773	DR. DOUG RITTMAN	MANAGER WATER SYSTEMS
EL PASO WATER UTILITIES	CENTRAL STREET PLANT	915-594-5402	ROBER RILEY	TECHNICAL
EL PASO WATER UTILITIES	GEOLOGY	915-594-5516	ROGER SPERKA	GEOLOGIST
EL PASO WATER UTILITIES	WESTSIDE	915-594-5785	ALFONSO ORTIZ	LINE LOCATOR
EL PASO CENTRAL APPRAISAL DISTRICT	COMMERCIAL INDUSTRY PROPERTY	915-780-2000	VINCE KEMENDO	ASSISTANT MANAGER OF APPRAISAL DIST.
EL PASO CITY-COUNTY HEALTH & ENVIRONMENTAL	AIR MONITORING	915-771-5800	JESUS REYNOSA	ENGINEER

## B.2 - ORGANIZATIONS CONSULTED DURING EA

AGENCY NAME	DEPT.	PHONE #	POC	POSITION
EL PASO CITY-COUNTY HEALTH & ENVIRONMENTAL	AIR MONITORING	915-771-5800	HENRY DEL RIO	TECHNICAL
EL PASO FIRE DEPT.	HAZARDOUS WASTE	915-771-1000	CHIEF TARANGO	CHIEF
HYDROMETRICS, INC.	ENVIRONMENTAL	915-532-3489	HAROLD KUTZ	CONSTRUCTION ENGINEER
MCI	LINE LOCATION	800-950-5555	STAFF	FIELD TECHNICIAN
QWEST COMMUNICATIONS	LINE LOCATION	800-283-4237	DAVE LUNBECK	FIELD TECHNICIAN
SOUTHWESTERN BELL	LINE LOCATION	800-828-5127	STAFF	LINE LOCATORS
SOUTHERN UNION GAS	LINE LOCATION	915-680-8242	STAFF	FIELD TECHNICIAN
SPRINT COMMUNICATIONS	LINE LOCATION	915-203-3895	RICK DERAGISH	FIELD TECHNICIAN
SUN METRO	SCHEDULES	915-534-5824	PETE DUNAVENT	ASSISTANT
TEXAS DEPT. OF TRANSP.	ADVANCE TRANSP. PLANNING	915-774-4200	JUDY RAMSEY	ADMINISTRATOR
TEXAS DEPT. OF TRANSP.	MAINTENANCE	915-774-4319	ROBERT TEJADA	DIRECTOR
TEXAS DEPT. OF TRANSP.	TRAFFIC CONTROL	915-774-4267	GILBERT JORDAN	ASSISTANT
TEXAS ONE CALL	UTILITIES	800-245-4545	BECKY	DISPATCH
EL PASO CITY WATER IMPROVEMENT DISTRICT #1	WATER	915-859-9111	WENDY MCELROY	WATER TECH
TNRCC	EL PASO, AIR QUALITY	915-834-4949	ARCHIE KLAUS	REGIONAL DIRECTOR
TNRCC	EL PASO, AIR QUALITY	915-834-4949	JOE SAENZ	AIR MONITOR TECHNICIAN
TNRCC	AUSTIN, AIR QUALITY	512-239-1620	LARRY BUTTS	AIR MONITOR TECHNICIAN
TNRCC	EL PASO, AIR QUALITY	915-834-4949	MARIO BALDERRAMA	AIR MONITOR TECHNICIAN
TNRCC	EL PASO, SOILS	915-834-4949	TERRY MCMILLAN	MANAGER
US ARMY CORPS OF ENGINEERS	REGIONAL PLANNING	213-452-3871	JOY JAISWAL	ENVIRONMENTAL MANAGER
US BORDER PATROL	EL PASO SECTOR	915-782-4300	EDWARD F. GERBER	AGENT
US BORDER PATROL	EL PASO SECTOR	915-782-4379	ERNESTO MARTINEZ	ASSISTANT CHIEF
US BORDER PATROL	EL PASO SECTOR	915-782-4300	JAMES GONZALEZ	AGENT
US BORDER PATROL	EL PASO SECTOR	915-782-4300	FERNANDO MELENDEZ	AGENT
US BUREAU OF RECLAMATION	EL PASO SECTOR	915-534-6321	WAYNE E. TREERS	WATER OPERATIONS TEAM LEADER
USGS	NEW MEXICO	505-830-7901	LINDA S. WEISS, P.E.	NM DISTRICT CHIEF
USGS	NEW MEXICO	505-830-7902	ROGER FERREIRA	ASSISTANT CHIEF

### **B.3 - PUBLIC COMMENTS RECEIVED**

**All public comments received in response to the preparation of this Environmental Assessment are provided on the following pages.**

**DIAMOND RASH GORDON & JACKSON, P.C.**

ATTORNEYS AT LAW  
300 EAST MAIN STREET

SEVENTH FLOOR  
EL PASO, TEXAS 79901-1379

TELEPHONE  
(915) 533-2277

FAX: (915) 545-4623

TOM DIAMOND  
NORMAN J. GORDON\*  
RONALD L. JACKSON  
JOHN R. BATOON  
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JOSETTE FLORES

ALAN V. RASH  
OF COUNSEL

\*BOARD CERTIFIED - CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

\*\*BOARD CERTIFIED - CRIMINAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

December 1, 2000

International Boundary and  
Water Commission United States and Mexico  
The Commons, Bldg. C, Suite 310  
4171 N. Mesa Street  
El Paso, Texas 79902

Attn: Ms. Sylvia A. Waggoner  
Division Engineer

**Re: Reconstruction of the American Canal Project - El Paso, Texas**

Dear Ms. Waggoner:

This will acknowledge receipt of your letter dated November 21, 2000 in which you transmitted the draft Finding of No Significant Impact and draft Environmental Assessment for the above-referenced project.

Enclosed herewith, please find a copy of the Consultation Policy which has been formally adopted by the Ysleta Del Sur Pueblo.

Please contact me so that we can discuss this matter and arrange a consultation schedule.

Sincerely,



Robert J. Truhill

RJT/mrc  
Enclosure

cc: Dr. Adolph Greenberg, Ph.D.  
Mr. Steve Fox, USIBWC

# **CONSULTATION POLICY**

## **Ysleta Del Sur Pueblo**

**Preface:** This document formalizes the existing procedures for consultation (government to government, or otherwise) between the Pueblo of Ysleta del Sur and the United States federal government including any and all agencies/offices/departments/bureaus therein. This policy statement reflects completely the procedures followed and adhered to by this federally recognized Indian tribe during previous consultations and therefore the procedures to be followed and adhered to in future consultations.

**Consultation:** Consultation is the formal, bilateral process of negotiation, cooperation and policy-level decision-making between two sovereign entities: the Tigua Tribe of Ysleta del Sur Pueblo and the United States Government or its designate. Consultation, therefore, is a process that leads ultimately to a decision. Consultation is not just a process or a mean to an end. As such, it should not be viewed by others and is not viewed by the Pueblo of Ysleta del Sur as a mere formality during the stages of any project. Consultation is not notifying our Tribal Council that an action will occur, requesting written comments on the action or alternative actions, and then proceeding with the action or one of the a priori alternatives. Such authoritarian, top-down procedures do not constitute consultation because a decision is not affected bilaterally between two sovereign entities.

### **Consultation Objectives:**

- 1) Assures that the Tribal Council and its designates understand fully the technical and legal issues, implications, and probable impacts involved in and resulting from an action or alternatives so that an informed policy-level decision can be made.
- 2) Improved policy-level decision-making of both the Tribal Council and the federal government.
- 3) Bilateral decision-making between and among sovereigns leading to co-managerial structure.
- 4) Protection of Ysleta del Sur Pueblo's cultural and natural resources, cultural tradition, economy and lifestyle.

- 5) Compliance with and respect for Tribal laws and Tribal integrity.
- 6) Full compliance with federal Indian law, federal statutes, and federal policy.
- 7) Develop and achieve mutual decisions through working relationships.
- 8) Improve the integrity and efficacy of decisions over time.
- 9) Recognition that the Tribe is both a stakeholder and regulator in projects that have potential or real impacts on tribal resources, culture, and lifestyle.

#### **Consultation Procedures:**

The consultation venue works or proceeds in much the same way that federal agencies typically operate. This means a series of technical meetings followed by a series of policy meetings. The technical meetings provide opportunities for consultation by and with the appropriate technical staff of both entities. The policy meetings provide opportunities for the resolution of those issues left unresolved at the technical level and for the resolution of those issues that are clearly policy grounded. The outcome of this procedure is the development of a common understanding of the technical and legal issues affecting or are affected by a decision. It is this common understanding in a democratized context that provides the basis for decision-making. The Tigwa Tribal Council will address more cooperatively those issues with which they had been thoroughly consulted with prior to a decision.

Consultation requires that federal agencies and the Tribal Council fully understand their roles in the context of the federally-mandated government-to-government relationship and the responsibilities which devolve upon the federal government under the Trust doctrine. In this environment, both the Tribal Council and the federal agency will benefit from the perspectives each brings to the table. This means personal communication, which is one of the foundations for meaningful consultation. To make this process work, the following series of activities should guide consultation:

1. Federal agency contacts the Governor of the Pueblo of Ysleta del Sur to inform him of an impending project or to conduct an activity which may or may not impact a tribal resource or tribal concern.
2. The Governor, after meeting with the Tribal Council and/or its designates, responds back to the federal agency that this issue is or is not important. If it is important, the Governor will communicate to the federal agency that the Tribe will initiate consultation.
3. Consultation is initiated through technical staff meetings which will inform the respective staffs in a comprehensive way so that each can brief and/or make recommendations to their

respective policy level entities in an informed way.

4. After the technical staff has briefed the Tribal Council, the Council will define the consultation protocol it wishes to follow, which will typically entail additional technical and policy level meetings, research activities, and a final policy level meeting to make a decision. These are then transmitted in written form to the federal agency. The outcome here should be a memorandum of agreement to establish a working relationship between entities.

5. The consultation protocol is followed.

6. A decision couched in bilateral cooperation between the federal agency and the Tribal Council is formulated. This decision will be fully compliant with federal and tribal laws and policies. The decision will protect the resources to which the Tigua Tribe of Ysleta del Sur Pueblo has specific aboriginal and Spanish land grant reserved rights. The decision will protect the cultural tradition and the religious practices of the Tribe.

This consultation policy will insure that Tribal Council and the federal government have not only communicated but have developed mutual understanding and trust. Within this context, policy level decision-making can and must work.

U.S. INT'L BOUNDARY WATER COMM.

4171 N. MESA, BLDG C, RM 224

EL PASO, TEXAS 79902

AD# 4333 SEQ# 562121  
LINES 69 COST \$——

PUBLISHERS AFFIDAVIT

STATE OF TEXAS  
COUNTY OF EL PASO

Before me, a Notary in and for El Paso County, State of Texas,  
on this day personally, appeared TERRIE CARTER who states upon  
oath that she is the ASSISTANT CLASSIFIED MANAGER of the EL PASO  
TIMES, a daily newspaper published in the City and County  
El Paso, State of Texas, which is a newspaper of general  
circulation and which has been continuously and regularly published  
for the period of not less than one year in the said County of  
El Paso, and that he was such upon the EL PASO TIMES.

That the LEGAL copy was published in the EL PASO TIMES  
for the dates of such publication being as follows,

1 DAY(s) to wit 12/02, 2000.

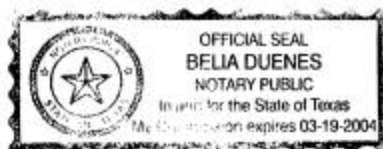
Signed

*Terrie A. Carter*

Subscribed and sworn to before me,

this the 4TH day of DECEMBER, 2000

*Bela Duenes*



NOTICE  
United States Section, In-  
ternational Boundary and  
Water Commission  
(USIBWC), United States  
and Mexico's (Recon-  
struction of the American  
Canal Project), Located  
in El Paso, Texas; Notice  
of draft Finding of No  
Significant Impact (FON-  
SI) for a draft Environ-  
mental Assessment  
(EA).  
The proposed project re-  
habilitation and enlarge-  
ment of the 1.98-mile-  
long American Canal in-  
volves demolishing the  
deteriorating concrete  
open channel segments  
of the canal and replac-  
ing them with reinforced  
concrete-lined canal  
segments. The improve-  
ments are scheduled for  
October 15, 2001 to Feb-  
ruary 15, 2002. The pro-  
ject is authorized under  
the Rio Grande Ameri-  
can Canal Extension Act  
of 1990, Public Law  
101-438, dated October  
15, 1990. The draft FONSI  
and draft EA are avail-  
able for review and com-  
ment at the reference  
desk of The University of  
Texas at El Paso Li-  
brary and the El Paso  
Main Library, 501 North  
Oregon Street, and is on  
the USIBWC Home Page  
at <http://www.ibwc.state.tx.gov>  
under (What's New).  
A limited number of cop-  
ies of these documents  
are available for review  
and comment upon re-  
quest from USIBWC at  
the following address:  
Ms. Sylvia A. Waggoner,  
Division Engineer,  
USIBWC, 4171 North Me-  
sa Street, C-310; El Paso,  
TX 79902; E-mail: [sylvia.waggoner@ibwc.state.gov](mailto:sylvia.waggoner@ibwc.state.gov). Com-  
ments on the draft EA  
and Draft FONSI are due  
to the USIBWC by De-  
cember 29, 2000.

**From:** "Ray Mathews" <Ray.Mathews@twdb.state.tx.us>  
**To:** <stevefox@ibwc.state.gov>  
**Date:** 12/11/00 9:51AM  
**Subject:** American Canal Project file

Mr. Fox, I am the TRACS Coordinator for the Texas Water Development Board, and I have tried to open the EA/FONSI for Reconstruction & Enlargement of the American Canal at your web site without success. Could you email me the file for this report, so that I can review it for my agency. Thank you,  
Ray

Raymond C. Mathews, Jr.  
Natural Resource Specialist V  
Lead Environmentalist for Senate Bill 1  
Texas Water Development Board  
Hydrologic & Environmental Monitoring Division  
Environmental Section  
1700 North Congress Avenue  
Austin, TX 78711-3231  
(512) 936-0822 (office)  
(512) 936-0889 (fax)  
email: Ray.Mathews@twdb.state.tx.us

**CC:** <mrositas@governor.state.tx.us>

**DOLORES BRIONES**

COUNTY JUDGE  
(915) 546-2098  
FAX (915) 543-3888



## County of El Paso

OFFICE OF THE COUNTY JUDGE

**COUNTY COURTHOUSE**

500 E. SAN ANTONIO ST., SUITE 301  
EL PASO, TEXAS 79901-2427  
E - MAIL  
briones@co.el-paso.tx.us

December 18, 2000

Sylvia A. Waggoner  
Division Engineer  
Environment Management Division  
International Boundary and Water Commission  
The Commons, Building C, Suite 310  
4171 N. Mesa Street  
El Paso, Texas 79902

Re: Reconstruction and Enlargement of the American Canal, El Paso, Texas

Dear Ms. Waggoner,

Alternative 4 of the above proposed project, for which the environmental assessment finds no significant impact, is a reasonable alternative. The County of El Paso does not oppose the proposed "Open Channel Alternative" provided proper measures are taken to protect the citizens of El Paso from harm and loss of property. It should be noted, however, that the development of a River Park along the U.S. bank of the Rio Grande is in progress and measures need to be considered to prevent obstruction of the proposed pedestrian, bicycle, and equestrian trails along this park.

The County of El Paso is coordinating the development of the River Park with Mr. Jim Stefanov, Chief Technical Planning, IBWC. Mr. Jesse Acosta, the County's Planning Coordinator and Mr. John Torres, Project leader for the River Park, will continue to be in contact with IBWC. If you need additional information please call Mr. Acosta or Mr. Torres at (915) 834-8242.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Dolores Briones", is written over a horizontal line.

Dolores Briones, County Judge  
County of El Paso, Texas



TEXAS  
HISTORICAL  
COMMISSION

*The State Agency for Historic Preservation*

GEORGE W. BUSH, GOVERNOR

JOHN L. NAU, III, CHAIRMAN

F. LAWRENCE OAKS, EXECUTIVE DIRECTOR

December 21, 2000

Sylvia A. Waggoner, Division Engineer  
C/o Steve Fox  
Environmental Management Division  
International Boundary and Water Commission  
The Commons, Building C, Suite 310  
4171 N. Mesa Street  
El Paso, Texas 79902

Re: Project review under Section 106 of the National Historic Preservation Act of 1966  
Draft FONSI and EA – Reconstruction and Enlargement of the American Canal Project,  
El Paso, El Paso County  
IBWC

Dear Mr. Fox,

Thank you for your correspondence describing the above referenced project. This letter serves as comment on the proposed undertaking from the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission.

The staff led by lead reviewer Lyman Labry of the Division of Architecture has reviewed the draft FONSI and EA for the American Canal Project in consultation with staff in our Archeology Division. We have no concerns regarding the proposed alternative No. 4 (the Open Channel Alternative) and hereby issue a determination of NO ADVERSE EFFECT.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this federal review process, and for your efforts to preserve the irreplaceable heritage of Texas. If you have any questions concerning our review or if we can be of further assistance, please contact Lyman Labry at 512/305-9109.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lyman Labry".

Lyman Labry, Project Reviewer for Trans-Pecos Region  
for  
F. Lawrence Oaks, State Historic Preservation Officer

cc: FLO/LML  
Myles Miller, Archeology Division

**CARLOS M. RAMIREZ**  
MAYOR  
**MONICA D. CUNNINGHAM**  
CHIEF ADMINISTRATIVE OFFICER  
**ESTRELLA ESCOBAR**  
EXECUTIVE ASSISTANT TO THE MAYOR  
**MARK THREADGILL**  
EXECUTIVE ASSISTANT TO THE MAYOR



December 26, 2000

**CITY COUNCIL**

**JAN SUMRALL**  
DISTRICT NO. 1  
**ROSE RODRIGUEZ**  
DISTRICT NO. 2  
**LARRY M. MEDINA**  
DISTRICT NO. 3  
**JOHN COOK**  
DISTRICT NO. 4  
**PRESI ORTEGA, JR.**  
DISTRICT NO. 5  
**PAUL JOSEPH ESCOBAR**  
DISTRICT NO. 6  
**LUIS G. SARIÑANA**  
DISTRICT NO. 7  
**ELVIA G. HERNANDEZ**  
DISTRICT NO. 8

Mr Steve Fox  
USIBWC  
4171 North Mesa Street, C-310  
El Paso, Texas 79902

RE: Draft Fonsi and Draft EA  
Reconstruction and Enlargement of American Canal  
El Paso, Texas

Dear Mr. Fox:

Thank you for the opportunity to submit the Department's comments on the referenced project. While we offer general consensus with the assessment made, the following concerns should be considered in the final analysis:

1. In previous meetings with the Rio Grande Task Force regarding the Rio Grande Riverpark project, it was agreed that sufficient levee accessibility should be maintained to allow a hike/bike trail to pass through the area. It had been commented that the IBWC would need to include a few closed conduit sections to provide space for the trail. The City and County are in the process of preparing additional grant applications to extend a trail from Anapra to the Downtown area. Construction on the funded portion of the trail between Country Club Road and Vinton will begin next year.
2. It is our understanding that the bridge to be removed is not the privately owned brick company bridge. At a future date, this bridge will require an in-depth review. Currently, this bridge provides the only direct access to Madero Park on the western bank of the Rio Grande River in New Mexico. Rehabilitation of Madero Park is underway and is proposed to be a historical node along the Riverpark trail. This bridge or another connection to both banks of the river will need to be retained.

The bridge to be removed is of historical merit. In addition to the drawings to be made, we would suggest that a marker with a drawing be placed as near to the site as possible. This location could become a stop on the Riverpark



*"Honor our Past...*

*...Imagine our Future*

Mr. Steve Fox, USIBWC  
December 26, 2000  
Page Two

trail, and would be in keeping with the heritage corridor theme and be eligible for the historical marker program underway with participation from the El Paso Community Foundation. The marker should maintain the established style of the other markers underway as part of the program.

3. As the design and construction plans are developed, coordination with the Rio Grande Taskforce should be ongoing. Jim Stefanov of the IBWC local office serves as Vice-Chair and can provide the necessary coordination between the two organizations.

Should you have any questions on these comments, please contact Rosemary Staley, Chief Urban Planner/Long Range Division, at (915) 541-4718. I look forward to our continued coordination on this project.

Sincerely,

**DEPARTMENT OF PLANNING,  
RESEARCH & DEVELOPMENT**

  
Patricia D. Adaute  
Interim Director

c: *Monica D. Cunningham, Chief Administrative Officer*  
*Estrella Escobar, Executive Asst. to the Mayor*

## Texas Review and Comment System

### Review Notification

**Applicant/Origination Agency:** International Boundary & Water Commission-US & Mexico

**Contact Name:** Mr. Steve Fox

**Contact Phone:** 915/832-4100

**Email:** stevefox@ibwc.state.gov

**Project Name:** Draft EA/FONSI: Reconstruction & Enlargement of American Canal, El Paso

**Funding Agency:** IBWC

**SAI/EIS#:** TX-R-20001128-0001-50

**Date Received:** 11/28/2000

**Date Comments Due BPO:** 12/28/2000

#### Review Participants

---

##### Agencies

Texas Attorney General's Office  
Ms. Karen W. Kornell  
Chief, Natural Resources Div.  
300 W. 15th Street, 10th Floor  
Austin, Texas

Texas Historical Commission  
Dr. James Bruseth  
TRACS Coordinator  
1511 Colorado Street  
Austin, Texas

Texas Parks & Wildlife Department  
Mr. Robert W. Spain  
Chief, Habitat Assessment Branch  
4200 Smith School Road  
Austin, Texas

State Soil and Water Conservation Board  
Mr. Robert G. Buckley  
Executive Director  
P.O. Box 658  
Temple, Texas

Texas Department of Health  
Ms. Peggy L. Belcher  
TRACS Coordinator  
1100 W. 49th Street  
Austin, Texas

Bureau of Economic Geology  
Scott Tinker, Ph.D.  
Director  
University Station, Box X  
Austin, Texas

Texas Natural Resource Conservation  
Commission  
Ms. Mary Lively  
Office of Policy & Regulatory Dev. MC205  
P. O. Box 13087  
Austin, Texas

##### Cogs

Rio Grande Council of Governments  
Mr. Glen Hinten  
Criminal Justice Coord/TRACS  
1100 N. Stanton Street, Suite 610  
El Paso, TX 79902

Texas Water Development Board  
Mr. Ray Mathews Jr.  
TRACS Coordinator  
1700 North Congress Avenue  
Austin, Texas

General Land Office  
Ms. Lanell Aston  
Executive Assistant, Office of the Deputy Comm.  
Stephen F. Austin Building, Rm. 720  
Austin, Texas

Texas Department of Transportation  
Mr. Ken Bohuslav  
TRACS Coordinator  
11th & Brazos  
Austin, Texas

**Special Notes/Comments:**

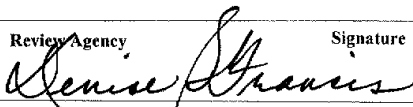
Summary of application provided by SPOC. Reviewers should contact applicant directly,  
or go to: <http://www.ibwc.state.gov>, to receive a full copy for review.

☒ No Comment

Return Comments to:

Review Agency

Signature



Denise S. Francis, State Single Point of Contact  
Governor's Office of Budget & Planning  
P.O. Box 12428  
Austin, TX 78711  
(512) 305-9415

**DIAMOND RASH GORDON & JACKSON, P.C.**

Attorneys at Law  
300 E. Main Street  
Seventh Floor  
El Paso, Texas 79901-1379

Tel : 915-533-2277  
Fax: 915-545-4623

Tom Diamond  
Norman J. Gordon\*  
Ronald L. Jackson  
John R. Batoon  
Robert J. Truhill  
Russell D. Leachman\*\*  
Josette Flores

Alan V. Rash  
Of Counsel

December 28, 2000

\*Board Certified - Civil Trial Law  
Texas Board of Legal Specialization  
\*\*Board Certified - Criminal Law  
Texas Board of Legal Specialization

VIA E-MAIL [stevefox@ibwc.state.gov](mailto:stevefox@ibwc.state.gov)

International Boundary  
and Water Commission  
The Commons, Building C, Suite 310  
4171 N. Mesa Street  
El Paso, Texas 79902

Attention: Steve Fox

**Re: Comments of the Ysleta Del Sur Pueblo on the Draft Fonsi and Draft EA  
Reconstruction & Enlargement of American Canal  
El Paso, Texas**

Dear Mr. Fox:

This firm represents the Ysleta Del Sur Pueblo, and these comments on the Draft EA on the reconstruction and enlargement of the American Canal dated October 19, 2000 are written on its behalf.

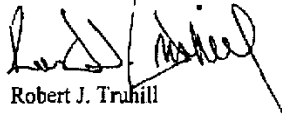
The Pueblo specifically notes the statements and conclusions set forth under Section 4.6 of the Draft EA where in it is stated that "Any historical or culturally important sites dating before 1937 are considered to have been destroyed either by annual flooding of the Rio Grande floodplain prior to construction of Elephant Butte Dam, or by construction activities of the American Canal". The Pueblo contends that the proposed reconstruction and enlargement project is the latest in a continuing pattern of federal projects involving the Rio Grande River which have changed the historic conditions of the River and have adversely affected the Pueblo's ability to perform religious ceremonies associated with the River.

The Pueblo has previously filed suit against the International Boundary and Water Commission in this respect. A copy of the Original Complaint is enclosed herewith. The EA should be revised to reflect the Pueblo's contention.

IBWC Letter  
Steve Fox  
December 28, 2000  
Page 2

Finally, the Pueblo objects to any final decision on this or any other project which would deny the Pueblo the right to exercise its First Amendment Rights in connection with the River.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Truhill", with a long horizontal stroke extending to the right.

Robert J. Truhill

RJT/mrc  
Enclosure

cc: Governor Albert Alvidrez  
Lt. Governor Filbert Candelaria  
Dr. Adolph Greenberg, Ph.D.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**YSLETA DEL SUR PUEBLO  
and RICK QUESADA**

**Plaintiffs,**

**vs.**

**UNITED STATES INTERNATIONAL  
BOUNDARY AND WATER  
COMMISSION and DOUGLAS  
ECHLIN,**

**Defendants.**

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**CIVIL ACTION NO. CA-00-EP-0205**

**ORIGINAL COMPLAINT FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Ysleta del Sur Pueblo (hereinafter "Tribe" or "Pueblo"), a federally recognized Indian Tribe and Rick Quesada, an individual member of said Tribe (collectively referred to as "Plaintiffs"), and request that this Court issue an injunction prohibiting the Defendants, Douglas Echlin and the United States International Boundary and Water Commission (hereinafter "USIBWC"), from continuing to violate the mandates of the National Environmental Policy Act (hereinafter "NEPA") 42 U.S.C. § 4321 et seq., and the American Indian Religious Freedom Act, 42 U.S.C. §1996 (hereinafter "AIRFA").

**ISSUES PRESENTED**

1. This case examines whether the USIBWC in conducting an environmental impact statement for the El Paso-Las Cruces Regional Sustainable Water Project (hereinafter the "Project") must address the restoration of in stream flows in the Rio Grande River as a project alternative where

the cessation of in stream flows has created environmental degradation and impaired the constitutional rights of an American Indian Tribe and its people. Further, this case examines whether the USIBWC has followed the statutory mandate under NEPA to consult with the Pueblo regarding the proposed actions.

### **JURISDICTION**

2. This action arises under the National Environmental Policy Act of 1969 as amended in 42 U.S.C. § 4321 et seq., and the American Indian Religious Freedom Act at 42 U.S.C. §1996. This Court has jurisdiction of this action under 28 U.S.C. §1331 and 28 U.S.C. §1361, and may issue a declaratory judgment and further relief under 28 U.S.C. §§2201 and 2202.

### **PARTIES**

3. Plaintiff, Ysleta del Sur Pueblo is a federally recognized Indian Tribe. See 25 U.S.C. §1300g et seq. Its tribal lands are located within El Paso County, Texas..

4. Plaintiff Rick Quesada is an individual who resides in El Paso County, Texas and is an enrolled member of the Ysleta del Sur Pueblo. Mr. Quesada is the War Captain, a spiritual leader of the Pueblo.

5. Defendant Douglas Echlin is an Environmental Protection Specialist of the Environmental Management Division of the USIBWC. Mr. Echlin is the acting director for comments pertaining to the environmental impact study being conducted by the USIBWC for the proposed El Paso-Las Cruces Regional Sustainable Water Project. Mr. Echlin may be served with service of process by serving him at 4171 North Mesa Street, Suite C-310, El Paso, Texas 79902.

6. The USIBWC is a federal agency acting through its United States Commissioner, John M. Bernal (see 22 U.S.C. §277 et seq.), and has received federal funding in connection with the El

Paso-Las Cruces Regional Sustainable Water Project. The USIBWC may be served by serving its United States Commissioner, John M. Bernal at 4171 N. Mesa Street, Suite C-310, El Paso, Texas 79902.

### **HISTORICAL BACKGROUND**

7. The Ysleta del Sur Pueblo is an aboriginal American Indian tribe. It arrived in El Paso in 1680 in the aftermath of a Pueblo revolt and settled in its present location in El Paso County in 1682. It established an extensive aboriginal territory under Spanish law and also received the Ysleta Grant from Governor Cachupin in 1751 in recognition of its rights under Spanish law to a Pueblo League. The Spanish Grant was recognized by the Mexican government and the State of Texas and is that part of El Paso County lying in the El Paso Valley Flood Plain between the Ascarate Grant and the Socorro Grant. The Pueblo developed an extensive irrigation system, parts of which are still in use today, and cultivated the Grant area with a variety of crops. The Pueblo's irrigation rights and right to use of the river predate the Elephant Butte Project and the formation of the United States of America. The Grant title under Spanish law was a communal title and not subject to alienation. The Pueblo's legal rights were protected by the Spanish authorities and this protection continued under Mexican jurisdiction. With the advent of the American period in 1848 attempts were made to subvert the Indian title into private non-Indian titles. This culminated with the incorporation of Ysleta in 1871 which was formed for the purpose of subverting Indian titles in contravention of the Indian Non-Intercourse Act, 25 U.S.C. § 177, and the Treaty of Guadalupe Hidalgo, 9 Stat. 922.

8. As a result of the incorporation of Ysleta in 1871, the Pueblo lost physical possession of its lands and its members became laborers on lands that were unlawfully possessed by others. The United States of America has never terminated the Pueblo's aboriginal title or its recognized title in

the Ysleta Grant. In common with the other pueblo tribes of the southwest, this Pueblo has extensive religious association with the Rio Grande River and in spite of its loss of physical possession of its holdings, members of the Pueblo continue to visit the river and make use of its water in connection with religious ceremonies. The USIBWC has proposed alternative uses of the river in the El Paso - Las Cruces Regional Sustainable Water Project which will permanently deplete the flows in the river at the sacred locations that the Indians rely upon to cleanse and renew the tribe on an annual basis. See affidavit of Rick Quesada in the Appendix accompanying the Motion for Preliminary Injunction. The tribe's property interests and religious use of the river and its waters arise under the First and Fifth Amendments to the U. S. Constitution.

9. The USIBWC proposed alternatives will create a permanent condition where *continued diversion of water from the river will result in a stagnant non-flowing series of pools, if that, below the Zaragoza bridge in a polluted state.* These conditions are unsuitable for the religious practices vital to the tribe's heritage and tradition. In the past, the Tribe has been able to obtain river flows for its religious purposes. The United States has never terminated the Pueblo's rights to the use of the river. Under the proposed alternatives, no consideration has been given to the Pueblo, and no alternatives have been considered which provide for in-stream flows. These alternatives present a constitutional denial of the Tribe's religious use of the river and create a health hazard and an environmental nuisance.

10. The USIBWC has failed and refused to consult with the tribe as required by the National Environmental Policy Act in preparing an Environmental Impact Statement (EIS) that

*impacts the Pueblo's rights by failing to address in-stream flows. Further there is no authority for the*

USIBWC to expend public funds on a project which has not been authorized by Congress.

### **FACTUAL BASIS**

11. On or about April 7, 2000, the USIBWC, acting as lead agency for the El Paso- Las Cruces Regional Sustainable Water Project, issued a draft environmental impact statement (hereinafter "DEIS") relating to the proposed regional water plan. The proposed project involves major federal action which requires the preparation of the DEIS. The goal of the project is to develop a high quality sustainable drinking water supply for the El Paso-Las Cruces region through the year 2030. The USIBWC is acting as the lead agency in preparation of the DEIS, and is the designated federal agency for NEPA compliance. Substantial federal funds have been used in preparation of the DEIS. The USIBWC is acting in concert with other cooperating federal agencies including the U.S. Bureau of Land Management, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Bureau of Land Management, the Natural Resources Conservation Service and the U.S. Department of the Army.

12. The Rio Grande is a sacred place for the Ysleta del Sur Pueblo and its people. The Pueblo has been conducting religious ceremonies and collecting materials for religious purposes at its sacred sites on the Rio Grande since 1682. The spiritual activity area of the Pueblo encompasses a reach of the Rio Grande extending upstream from the Zaragoza crossing approximately five-eighths of a mile and continuing downstream ending at the eastern boundary of the Ysleta Grant. These religious practices require a sufficient water quantity to allow submersion, and a sufficient in stream flow to carry various religious materials downstream. In the absence of the required flows, the

Pueblo will not be able to perform its religious activities.

13. Plaintiffs have a constitutional interest in their freedom to exercise their religious practices at the river as they have done since the inception of the United States.

14. The United States has a trust responsibility to the Pueblo to protect the rights of the Pueblo. The Pueblo has a grant and an aboriginal claim to the lands which are specifically and adversely affected by the proposed actions. The Pueblo irrigated and used lands affected by the proposed action since the late 1600's. Many of the irrigation ditches or "acequias" which are still in use were originally built by the Pueblo.

15. The United States has a trust responsibility to protect and maintain rights reserved by or granted to American Indians through treaties and federal statutes. The Pueblo's rights are protected by the Treaty of Guadalupe Hidalgo.

16. Despite its legal obligations, USBWC refused and continues to refuse to consider restoration of in-stream flows and to consult with the Pueblo.

17. As a result of the foregoing failure of consultation, the DEIS is based upon incorrect and insufficient data, especially concerning in-stream flows. For example, the DEIS provides that "no Indian trust asset issues were identified at the project's public scope meetings which were held in September 1998", and that "[t]he project would not significantly change the historic condition of the Rio Grande downstream of the Riverside Dam in El Paso and south of Zaragoza crossing, or the ability of the Ysleta Del Sur Pueblo to perform religious ceremonies associated with the river at this location". The Rio Grande historically has had in-stream flows which were used by the Pueblo for more than 300 years. The DEIS gives no consideration to any alternatives that would provide for in-stream flows, but rather treats recent diversions of flows as historical. The proposals will adversely

affect the Plaintiffs' historical use of the river.

18. Further delay in bringing this action has been rendered impractical by the response of Defendants to Plaintiff's demand for consultation. USIBWC has indicated in correspondence that it has no intention of consulting with the Pueblo. See affidavit of Robert J. Truhill in the appendix accompanying the Motion for Preliminary Injunction. If forced to wait for the EIS to be issued, Plaintiffs injuries will only be magnified. The NEPA statute contemplates consultation. All attempts at consultation or to even establish a protocol for consultation have been futile. Due to the lack of consultation, the scope of alternatives considered are unduly limited and does not include restoration of in-stream flows. A post hoc review is not meaningful consultation and not in conformity with the NEPA mandate.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the USIBWC and Douglas Echlin be cited to appear, and that after notice and hearing, that the Plaintiffs recover the following:

1. A preliminary injunction prohibiting the issuance of an EIS in connection with the El Paso-Las Cruces Regional Sustainable Water Project or any other action in furtherance of the project until such time as there has been full consultation with the Pueblo and consideration of the issues identified herein;
2. A permanent injunction prohibiting the issuance of an EIS in connection with the El Paso-Las Cruces Regional Sustainable Water Project or any other action in furtherance of the project in the absence of full consultation with the Pueblo and consideration of the issues identified herein;
3. In the alternative, the Court issue an order compelling Defendants to engage in

meaningful consultation with the Pueblo and to consider the issues identified herein;

4. Costs;
5. Such other relief either at law or in equity to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

DIAMOND, RASH, GORDON & JACKSON, P.C.

BY: \_\_\_\_\_

TOM DIAMOND  
State Bar No. 05804000  
RUSSELL D. LEACHMAN  
State Bar No. 12069710  
ROBERT J. TRUHILL  
State Bar No. 20254500  
300 E. Main St., 7th Floor  
El Paso, Texas 79901  
(915) 533-2277  
(915) 545-4623 fax  
ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing Original Complaint for Injunctive Relief and Summons was sent via certified mail in accordance with Rule 4(i), Federal Rules of Civil Procedure to the following persons on the 11<sup>th</sup> day of July, 2000: James Blagg, United States Attorney for the Western District of Texas, Attn: Civil Process Clerk, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216, and Janet Reno, Attorney General of the United States, Department of Justice Building, 950 Pennsylvania Ave. NW, Room 5111, Washington, D.C. 20530; I also hereby certify that a true and correct copy of the forgoing Original Complaint for Injunctive Relief and Summons was personally served and sent via certified mail in accordance with Rule 4(i), Federal Rules of Civil Procedure to the following persons on the 11<sup>th</sup> day of July, 2000 Doug Echlin, Environmental Protection Specialist, Environmental Management Division, United States International Boundary and Water Commission, 4171 N. Mesa Street, Suite C-310, El Paso, Texas 79902, and John M. Bernal, United States Commissioner, United States International Boundary and Water Commission, 4171 N. Mesa Street, Suite C-310, El Paso, Texas 79902.

/S/

RUSSELL D. LEACHMAN

Attorney for Plaintiffs

**Antonio D. Flores**

**From:** Antonio D. Flores  
**Sent:** Friday, December 29, 2000 1:53 PM  
**To:** 'stevefox@lbwc.state.gov'  
**Cc:** Edward Drusina  
**Subject:** Draft FONSI and Draft EA Reconstruction and Enlargement of American Canal

Steve,

The City of El Paso Department of Public Works offers the following comments on subject:

1. The canal adjacent to West Palsano Drive should be covered in its entirety due to the recent large number of automobile fatalities in this area.
2. LBWC should further study this portion of the canal alignment to address the safety concerns of Mexico and U.S. residents.
3. Laredo and Nuevo Laredo border area has a wide and beautiful river separating both cities. Why can't El Paso have something similar and still address economic and environmental considerations?

Sincerely,

*Antonio D. Flores, P.E.  
City of El Paso  
Department of Public Works  
Ph./Fax (915)541-4455/4405*

**From:** "Lara, Harry L" <Harry.Lara@bnsf.com>  
**To:** "stevefox@ibwc.state.gov" <stevefox@ibwc.state.gov>  
**Date:** 1/2/01 3:14PM  
**Subject:** RECONSTRUCTION & ENLARGEMENT OF THE AMERICAN CANAL AT EL PASO, TX.

Steve,

This is as per Sylvia A. Waggoner's letter dated November 21, 2000 with attached draft copy of the Environmental Assessment for the Reconstruction of the American Canal Project at El Paso, Tx. Following are issues that need to be considered when designing this project.

The area the BNSF Railroad would be concerned with can be referred to as between Railroad M.P. 1153 and M.P. 1154 on the southside of the ASARCO Plant. If and when a plan is agreed upon we would be concerned with the proposed reconstruction and/or enlargement project and its close proximity to our main track. No matter which alternative is taken the project will intersect the live load influence area due the location of the existing canal. The plans for the proposed project will have to be designed to resist railroad live loads. This should also include the design of any temporary shoring and retaining walls.

Anyone working on BNSF Property will have to take a BNSF Safety Orientation Course via the internet, will have to wear the required personal protective equipment, will abide by all BNSF rules and requirements, and will require track protection by a qualified BNSF employee.

If you have any questions please call me at (505)767-6847. Thanks

Sincerely,  
Harry L. Lara

**CC:** "Goff, James R" <James.Goff@bnsf.com>, "Hulstrom, Scott A" <Scott.Hulstrom@bnsf.com>, "Sloggett, Craig L" <Craig.Sloggett@bnsf.com>, "Atkins, Brian A" <Brian.Atkins@BNSF.com>



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

10711 Burnet Road, Suite 200  
Austin, Texas 78758  
(512) 490-0057

Consultation #2-15-99-I-806

Sylvia A. Waggoner  
International Boundary and Water Commission  
The Commons, Building C, Suite 310  
4171 North Mesa Street  
El Paso, Texas 79902

Dear Ms. Waggoner:

This is a response to your November 21, 2000 letter requesting that the U.S. Fish and Wildlife Service (Service) provide comments on your Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA): *Reconstruction and Enlargement of American Canal, El Paso, Texas*. We received certain segments of the Draft EA with your letter and downloaded the entire 393 page Draft EA from your website.

As indicated in your Draft EA in Appendix G2, we initially commented on this project in a brief letter to John Knopp of Encon International dated September 20, 1999. In that letter we concurred with your FONSI to federally listed or proposed threatened and endangered species and other resources for which we have the responsibility of protecting. Appendix G1 of your EA, entitled "Habitats, Wetlands, Endangered Species, Fish and Wildlife Report", provided information on the population of cliff swallows that utilize airspace above the American Canal and the Rio Grande for foraging and structures associated with the canal for nest sites. We understand that some of the structures upon which the swallows currently build their nests would be disturbed or destroyed during your proposed canal reconstruction and enlargement. We understand that structures will be available as nest sites for the swallows when the proposed project is completed.

In order to avoid harm to nesting cliff swallows (and barn swallows if they also nest on your structures) and avoid a violation of The Migratory Bird Treaty Act of 1918 (MBTA), we recommend that any destruction or disturbance to swallow nesting sites take place outside the breeding season, which generally extends from early March to late July in Texas. The MBTA prohibits persons to "pursue, hunt, take, capture, kill, [or to] attempt to take, capture, or kill . . . any migratory bird included in the terms of this Convention . . . for the protection of migratory birds . . ." This Act provides protection for the swallows nesting on your canal structures, as they winter in southern South America and migrate to North America to nest every spring. It would be illegal to destroy those nests containing eggs or young birds, as those young birds would certainly be killed in the process. Also, attempting to move nests containing eggs or young would also be illegal under the Act, as parent birds would almost certainly abandon any

nests that had been moved, and their eggs or young would quickly perish. Prohibiting birds from returning to active nests resulting in death or injury to eggs or young in the nest would also constitute a violation of the MBTA.

If destruction or disturbance of swallow nesting sites must take place during the breeding season, then we recommend that you take measures before the breeding season to discourage swallow use of those canal structures that must be disturbed or destroyed. For example, swallows could be discouraged from nesting on certain structures by removing old nests *before the breeding season*. Loosely hung cloth could be attached to structures to cover potential nest attachment sites, or a substance, such as petroleum jelly or grease could be applied to potential nest sites to persuade the swallows to select different nest sites.

If, by some accident, swallows build new nests or reoccupy old nests that were inadvertently not removed from the previous season on structures that must be disturbed or destroyed during the breeding season, then please contact us for further guidance on how to proceed with your project.

Again, we thank you for your concern for threatened and endangered species, migratory birds, and other natural resources, and we appreciate the opportunity to provide comments on your Draft EA. We wish you luck with your canal reconstruction and enlargement project. If we can be of further assistance or if you have questions about these comments, please contact Ray Brown of our staff at (512) 490-0057, extension 243.

Sincerely,

A handwritten signature in cursive script that reads "William Seawell".

*for*  
David C. Fredrick  
Supervisor



OFFICE OF THE GOVERNOR

RICK PERRY  
GOVERNOR

Wednesday, January 10, 2001

Mr. Steve Fox  
International Boundary & Water Commission-US & Mexico  
4171 N. Mesa Street, C-310  
El Paso, TX 79902

RE: TX-R-20001128-0001-50

Draft EA/FONSI: Reconstruction & Enlargement of American Canal, El Paso

Dear Mr. Fox:

Your application for assistance referenced above has been reviewed. No substantive comments were received.

We appreciate the opportunity afforded to review your proposal. Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Denise S. Francis".

Denise S. Francis, State Single Point of Contact  
DSF/mhr

cc: International Boundary and Water Commission



January 12, 2001

Sylvia A. Waggoner  
Environmental Management Division  
International Boundary and Water Commission  
The Commons, Building C, Suite 310  
4171 N. Mesa Street  
El Paso, TX 79902

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ANDREW SANSON  
EXECUTIVE DIRECTOR

RE: Reconstruction and Enlargement of American Canal, El Paso County

Dear Ms. Waggoner:

Thank you for coordinating with this agency in your planning activities regarding the reconstruction and enlargement of the American Canal in El Paso. Texas Parks and Wildlife Department (TPWD) staff have reviewed the Draft Environmental Assessment (DEA) and offer the following comments regarding this project.

The project entails demolishing approximately two miles of deteriorating concrete open channel segments of the canal and replacing them with reinforced concrete-lined canal segments. Activities associated with the project include increasing the canal capacity to 1535 cubic feet per second, demolition of existing canal structures and open channel concrete lining, reconstructing and enlarging the 400-foot open channel segment immediately downstream from the headgates and the 100-foot open channel segment upstream from the gaging station, installing fences along the canal, installing safety equipment to reduce canal drownings, and removing the Smelter Bridge and the abutments of Hart's Mill Bridge.

Soil erosion and siltation into nearby aquatic and wetland habitats should be minimized using hay bales, silt fence, or similar soil erosion prevention techniques. Hay bales should be certified weed-free or comprised of locally grown hay or straw in order to prevent the introduction of exotic and invasive plant species. In order to enhance the stabilization of exposed soils, newly graded areas should be seeded or sodded with native grasses. Removal of large trees and native vegetation should be avoided.

Because activities entail improvements to existing structures, adverse impacts to fish and wildlife resources should be minimal.

I appreciate the opportunity to review and comment on this project.

Sincerely,

Danny Allen  
Wildlife Habitat Assessment Program  
Wildlife Division

cc: Melissa Parker (Resource Protection)

DLA:pmo.8279

*To manage and conserve the natural and cultural resources of Texas for the  
use and enjoyment of present and future generations.*

*Give Thanks for  
the Memories...*



Lone Star Legacy.

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AUSTIN, TEXAS 78744-3291  
512-389-4800  
www.tpwd.state.tx.us

## **B.4 - OTHER CORRESPONDENCE**

**DIAMOND RASH GORDON & JACKSON, P.C.**

Attorneys at Law  
300 E. Main Street  
Seventh Floor  
El Paso, Texas 79901-1379

Tel.: 915-533-2277  
Fax: 915-545-4623

Alan V. Rash  
Of Counsel

Tom Diamond  
Norman J. Gordon\*  
Ronald L. Jackson  
John R. Batson  
Robert J. Truhill  
Joette Flores

October 19, 2001

\*Board Certified - Civil Trial Law  
Texas Board of Legal Specialization

**HAND-DELIVERY**

International Boundary  
and Water Commission  
The Commons, Building C, Suite 310  
4171 N. Mesa Street  
El Paso, Texas 79902

Attention: Mr. Steve Fox

Re: Comments of the Ysleta Del Sur Pueblo on the Draft Fonsi and Draft EA  
Reconstruction & Enlargement of American Canal - El Paso, Texas

Dear Mr. Fox:

This will acknowledge receipt of your e-mail dated October 19, 2001 in which you transmitted 2 proposed paragraphs which would be inserted into the EA/FONSI for the above-referenced project.

The proposed language makes reference to archaeological sites or historical structures and ignores the Tribe's ethnographically documented spiritual connection to the river. Enclosed herewith, please find a copy of the "Ysleta Del Sur Pueblo and The Rio Grande, An Ethnographic Assessment of Ysleta Del Sur Pueblo's Relationship with the Rio Grande" by Adolph M. Greenberg, Ph.D., the Pueblo's ethnographer. Dr. Greenberg's study is transmitted to the IBWC under the condition that it is for the agency's internal review and is not authorized for publication or dissemination to the public and is strictly confidential.

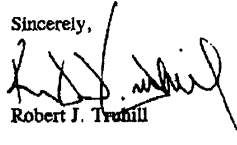
The Pueblo requests that this letter, without Dr. Greenberg's study, be appended to the EA.

C:\MRC Documents\TIGUA\GENERAL\IBWC.fox.018

IBWC /Steve Fox  
October 19, 2001  
Letter, Page 2

Upon receipt of this correspondence please contact this office so that we can discuss the Pueblo's request.

Sincerely,



Robert J. Trull

RJT/mrc  
Enclosure

cc: Governor Albert Alvidrez  
Lt. Governor Filbert Candelaria  
Rick Quezada, War Captain  
Dr. Adolph Greenberg, Ph.D.

**B.5 – LIST OF AGENCIES ORGANIZATIONS, AND  
PERSONS MAILED DURING FINAL EA**

Mr.	Johnson	Mr. Lairy Johnson	Environmental Manager	ASARCO	P.O. Box 1111	El Paso	TX	79999
Mr.	Lara	Mr. Harry Lara	Field Engineer	Burlington Northern Santa Fe Railway	1624 1st Street NW	Albuquerque	NM	87102
Mr.	Roy	Mr. Cordell Roy	Superintendent	Chemical National Memorial	800 South San Marcial	El Paso	TX	79905
Mr.	Jimenez	Mr. Armando Jimenez	City Architect	City of El Paso	2 Civic Center Plaza, 4th Floor	El Paso	TX	79999
Ms.	Adauto	Ms. Pat Adauto	Director of City Planning Department	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Mr.	Drusina	Mr. Edward Drusina	Director of Public Works Department	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Mayor	Caballero	The Honorable Raymond Caballero	Mayor of El Paso	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Representative	Rodriguez	The Honorable Rose Rodriguez	West Central Representative	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Representative	Summerall	The Honorable Jan Summerall	West Side Representative	City of El Paso	2 Civic Center Plaza	El Paso	TX	79999
Dr.	Magaña	Dr. Jorge C. Magaña, M.D.	Director	City-County Health Unit	222 S. Campbell	El Paso	TX	79901
Commissioner	Haggerty	The Honorable Daniel Haggerty	County Commissioner, 4th Precinct	County of El Paso	500 E. San Antonio	El Paso	TX	79901
Judge	Briones	The Honorable Dolores Briones	County Judge	County of El Paso	500 E. San Antonio	El Paso	TX	79901
Mr.	Brotherton	Mr. Mark Brotherton		El Paso Historical Society	9305 Turrentine	El Paso	TX	79925
Mr.	Fifer	Mr. Edd Fifer	General Manager	El Paso County Water Improvement District, #1	294 Candelaria	El Paso	TX	79907
Mr.	Parraz	Mr. Pete Parraz	President	El Paso Hispanic Chamber of Commerce	2829 Montana, Suite 2-F	El Paso	TX	79903
Ms.	Valle	Ms. Barbara Valle	Head Librarian	El Paso Public Library	501 North Oregon Street	El Paso	TX	79901
Ms.	Fowler	Ms. Jane Fowler	Sanctuary Chair	El Paso Trans-Pecos Audubon Society	601 W. Yandell, F25	El Paso	TX	79902
Ms.	Padilla	Ms. Ana Padilla	Water Conservation Manager	El Paso Water Utilities, PSB	1154 Hawkins	El Paso	TX	79925
Mr.	Cooke	Mr. Gregg Cooke	Regional Administrator, 6RA	U.S. Environmental Protection Agency, Region VI	1445 Ross Ave., Suite 1200	Dallas	TX	75202
Mr.	Pena	Mr. Hector Pena	Technical Professional	EPA-Enforcement Division	1445 Ross Ave., Ste. 1200	Dallas	TX	75202
Mr.	Janskey	Mr. Michael Janskey	Technical Professional	EPA-Enforcement Division	1445 Ross Ave., Ste. 1200	Dallas	TX	75202
Mr.	Rubio	Mr. Joe Rubio	Lead Organizer	EPISO	7134 Alameda Ave	El Paso	TX	79915
Ms.	Francis	Ms. Denise Francis	State Single Point of Contact	Governor's Budget Planning Office	P.O. Box 12428, Capitol Station	Austin	TX	78711
Mr.	Jurey	Mr. Wes Jurey	President	Greater El Paso Chamber of Commerce	10 Civic Center Plaza	El Paso	TX	79901
Mr.	Perez	Mr. Robert Perez	Texas Director	LULAC, District No. 4	4110 Alameda Ave	El Paso	TX	79905
Ms.	Glazebrook	Ms. Catriona Glazebrook	Executive Director	National Audubon Society	2525 Wallingwood, Suite 1505	Austin	TX	78746
Mr.	Diaz	Mr. Hector F. Diaz	Acting Executive Director	Rio Grande Council of Governments	1100 N. Stanton, Ste. 610	El Paso	TX	79902
Ms.	Chavez	Ms. Marybelle Chavez	District Engineer	Texas Department of Highways & Public Trans.	212 N. Clark, P.O. Box 10278	El Paso	TX	79905
Mr.	Mestas	Mr. Oscar Mestas	District Manager	Texas Forest Service, El Paso Office	401 E. Franklin Ave, Ste. 540	El Paso	TX	79901
Mr.	Oaks	Mr. F. Lawrence Oaks	Deputy State Historical Preservation	Texas Historical Commission	P.O. Box 12276	Austin	TX	78711
Representative	Najera	The Honorable Manny Najera	Representative - District #75	Texas House of Representatives	1716 Mike Hill	El Paso	TX	79936
Representative	Chavez	The Honorable Norma Chavez	Representative - District #76	Texas House of Representatives	6070 Gateway East #508	El Paso	TX	79905
Representative	Moreno	The Honorable Paul C. Moreno	Representative - District #77	Texas House of Representatives	2314 Montana Ave.	El Paso	TX	79903
Representative	Haggerty	The Honorable Pat Haggerty	Representative - District #78	Texas House of Representatives	4849 N. Mesa St. #206	El Paso	TX	79912
Representative	Pickett	The Honorable Joe Pickett	Representative - District #79	Texas House of Representatives	1790 Lee Trevino #307	El Paso	TX	79936
Mr.	Clouse	Mr. Archie Clouse	Regional Director	Texas Natural Resource Conservation Commission	401 E. Franklin Ave., Suite 560	El Paso	TX	79901
Mr.	Sansom	Mr. Andrew Sansom	Executive Director	Texas Parks & Wildlife Dept.	4200 Smith School Road	Austin	TX	78744
Mr.	Riskind	Mr. David Riskind	Technical Professional	Texas Parks & Wildlife Dept.	4200 Smith School Road	Austin	TX	78744
Senator	Nelson	The Honorable Jane Nelson	Texas State Senator, District #9	Texas Senate	P.O. Box 12068	Austin	TX	78711
Senator	Shapleigh	The Honorable Eliot Shapleigh	Texas Senator - District #29	Texas Senate	800 Wyoming, Suite A	El Paso	TX	79902
Dr.	Phillips	Dr. Patricia Phillips	Head Librarian	The University of Texas at El Paso, Library	UTEP Library	El Paso	TX	79968
Governor	Muñoz	Mr. Vince Muñoz	Tribal Governor	Tigua Tribal Council	P.O. Box 17579	El Paso	TX	79917
LTC	Midkiff	LTC Raymond G. Midkiff	District Engineer	U.S. Army Corps of Engineers	4101 Jefferson Plaza NE	Albuquerque	NM	87109
Mr.	Malanchuk	Mr. Dan Malanchuk	Biologist, El Paso Office	U.S. Army Corps of Engineers - Albuquerque District	P.O. Box 6096	Fort Bliss	TX	79906
Mr.	Cortez	Mr. Bert Cortez	Projects Manager	U.S. Bureau of Reclamation, Rio Grande Project	700 E. San Antonio St., Rm. 8318	El Paso	TX	79901
Mr.	Dhillon	Mr. Gurdit Dhillon	Acting District Director	U.S. Customs Service	9400 Viscount, Suite 104	El Paso	TX	79925
Mr.	Olivas	Mr. Bernie Olivas	Inspector	U.S. Department of Agriculture	3600 East Paisano, Rm. 154A	El Paso	TX	79905
Ms.	Parker	Ms. Beth Parker	Project Manager	Daniel B. Stephens & Associates, Inc.	6020 Academy Rd NE	Albuquerque	NM	87109
Ms.	Fowler-Propst	Ms. Jennifer Fowler-Propst	Field Supervisor, Ecological Svc	U.S. Fish & Wildlife Service	500 Gold Ave SW Rm 8100	Albuquerque	NM	87102
Ms.	Kaufman	Ms. Nancy Kaufman	Regional Director	U.S. Fish & Wildlife Service	Region 2, P.O. Box 1306	Albuquerque	NM	87103
Mr.	Frederick	Mr. David C. Frederick	Supervisor, Office of Ecological Svc	U.S. Fish & Wildlife Service	10711 Barnet Road, Suite 200	Austin	TX	78758
Mr.	Johnson	Mr. Robert K. Johnson	Administrator	U.S. General Services Administration - El Paso Office	700 E. San Antonio, Rm. C-415	El Paso	TX	79901
Mr.	Martinez	Mr. Ernesto Martinez	Assistant Chief	U.S. Immigration & Naturalization Service	8901 Montana Ave.	El Paso	TX	79925
Congressman	Reyes	The Honorable Silvestre Reyes	Congressman - District #16	United States House of Representatives	310 N. Mesa St., #400	El Paso	TX	79901
Senator	Hutchinson	The Honorable Kay Hutchinson	Senator	United States Senate	284 Russell Senate Office Bldg.	Washington	D.C.	20510
Senator	Gramm	The Honorable Phil Gramm	Senator	United States Senate	284 Russell Senate Office Bldg.	Washington	D.C.	20510
Ms.	Metcalf	Ms. Bess Metcalf		Rio Grande/Rio Bravo Basin Coalition	109 North Oregon, Suite 617	El Paso	TX	79901
Ms.	Walsh	Ms. Elizabeth Walsh		Sierra Club, El Paso Regional Group	829 Cloudburst Drive	El Paso	TX	79912
Mr.	Harris	Mr. Steve Harris	Executive Director	Rio Grande Restoration	P.O. Box 1612	El Prado	NM	87529
	Smith	Ms. Judy Smith	Monograph Acquisitions Svcs	MONO.AQ.SVCS	Colorado State Libraries	Fl. Collins	CO	80523